Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
FILED DECEMBER 29, 1975
CERTIORARI GRANTED APRIL 5, 1976

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Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

RELEVANT DOCKET ENTRIES

BOUNDS v. SMITH

May 25, 1972. Plaintiffs, state court prisoners housed at North Carolina Central Prison, Raleigh, North Carolina, filed a pro se complaint pursuant to 42 U.S.C. § 1983 claiming that their constitutional rights had been violated because the Defendants denied "to them and all others similarly situated a law library where they would be able to look for mandatory, judicial, persuasive and secondary authorities . . ."

June 16, 1972. Defendants filed Motion to Dismiss

August 11, 1972. Memorandum Opinion and Order filed granting Defendants' Motion to Dismiss as to allegations 3, 4, 5 and 6. Defendants' Motion to Dismiss allegations 1 and 2 was denied and the Defendants ordered to fully respond to allegations 1 and 2. (Supp. A. p. 1)

September 18, 1972. Answer filed by Defendants

November 30, 1972. Order filed appointing Howard E. Manning, Esq., to represent Plaintiffs.

July 24, 1973. Plaintiffs filed Motion for Summary Judgment.

August 16, 1973. Memorandum Opinion and Order filed granting Summary Judgment and ordering the North Carolina Department of Correction to file comprehensive proposals for providing the Plaintiffs with law libraries or reasonable alternatives to them. (Supp A. p. 9)

November 8, 1973. Order entered enlarging time to file comprehensive proposals.

December 24, 1973. Defendants filed proposed plans for inmate law libraries.

April 20, 1974. Plaintiffs filed objections to Defendants' proposed plan.

May 30, 1974. Memorandum Opinion and Order filed approving the prison library plan as modified and ordering counsel for all parties to submit briefs on the issue of the establishment of an independent attorney's office in the Department of Correction. (Supp. A. p. 14)

October 11, 1974. Consolidated Memorandum Opinion and Order filed consolidating SMITH v. BOUNDS with MORGAN v. TURNER, No. 4277—Raleigh (E.D. N.C.) and HARRINGTON v. HOLSHOUSER, No. 790-RE Washington (E.D. N.C.) and ordering that the issue of an independent attorney's office be resolved in favor of the defendants. (Supp. A. p. 21)

October 11, 1974. Defendants' proposed law library, with modifications, is adopted by the Court. (Supp. A. p. 22)

November 6, 1974. Defendants file Notice of Appeal to the Fourth Circuit Court of Appeals.

MORGAN v. TURNER

April 5, 1973. Plaintiffs, state court prisoners housed at the Odom Correctional Institution of the North Carolina Department of Correction, filed a pro se complaint pursuant to the provisions of 42 U.S.C. § 1983 presenting various contentions, among which was the contention that the Defendant was "depriving them of the First and Fifth Amendment rights of freedom of access to the Courts by refusing and failing to provide indigent plaintiffs and the class they represent with any law library."

May 22, 1973. Order filed appointing Howard E. Manning, Esq., to represent the Plaintiffs.

June 6, 1973. Defendant filed Motions to Dismiss and for Summary Judgment.

July 24, 1973. Plaintiffs filed Motion for Summary Judgment.

August 16, 1973. Memorandum Opinion and Order filed granting the Plaintiffs' Motion for Summary Judgment "permanently enjoining the Defendant from denying Plaintiffs a law library." (Supp. A. p. 29)

May 30, 1974. Memorandum Opinion and Order consolidating this case with SMITH v. BOUNDS, No. 3052, and ordering the State to implement a prison law library and further ordering counsel to submit briefs on the issue of the establishment of an independent attorney's office in the Department of Correction. (Supp. A. p. 14)

HARRINGTON v. HOLSHOUSER

February 23, 1973. Plaintiffs, state court prisoners housed at the Washington County Subsidiary of the North Carolina

Department of Correction, filed a paperwriting pursuant to 42 U.S.C. § 1983 in which they parenthetically stated "that no writ room facilities are provided at Creswell Prison Unit nor paper, carbon paper, law books, photocopier, typewriter, or facilities such as table and environment conductive to pursuit of such an interest".

March 20, 1973. Defendants filed Motions to Dismiss and for Summary Judgment.

May 25, 1973. Memorandum Opinion and Order filed allowing the Defendants' Motion for Summary Judgment and dismissing the Plaintiffs' Complaint. (Supp. A. p. 31)

June 29, 1973. Notice of Appeal filed. District Court enters Certificate that appeal not taken in good faith.

March 20, 1974. Certificate of Probable Cause issued by the Fourth Circuit Court of Appeals and Professor Barry Nakell of the University of North Carolina School of Law, Chapel Hill, North Carolina, is assigned as counsel to represent the Appellants.

September 5, 1974. Oral argument heard in the United States Court of Appeals.

September 23, 1974. Opinion of the United States Court of Appeals for the Fourth Circuit filed in HARRINGTON v. HOLSHOUSER, No. 74-1320, 506 F. 2d 1397 (4th Cir. 1974) [Table] and remanded to the District Court with the suggestion that it be consolidated with SMITH v. BOUNDS, supra.

October 11, 1974. Order entered that HARRINGTON v. HOLSHOUSER be consolidated with SMITH v. BOUNDS, supra, and MORGAN v. TURNER, supra.

CONSOLIDATED PROCEEDINGS

October 11, 1974. Memorandum Opinion and Order filed in the consolidated cases finding no constitutional right to

the establishment of an independent attorney's office in addition to a law library program. (Supp. A. p. 21)

October 11, 1974. Order filed approving, with modification, the Department of Correction's proposed prison library plan. (Supp. A. p. 26)

November 6, 1974. Defendants filed Notice of Appeal

May 8, 1975. Oral arguments heard in the United States Court of Appeals for the Fourth Circuit.

September 30, 1975. Opinion of the United States Court of Appeals for the Fourth Circuit filed in the consolidated cases of SMITH v. BOUNDS, MORGAN v. TURNER and HARRINGTON v. HOLSHOUSER.

December 29, 1975. Petition for Writ of Certiorari filed in the Supreme Court of the United States in the consolidated cases of BOUNDS v. SMITH, TURNER v. MORGAN, and HOLSHOUSER v. HARRINGTON, No. 75-915, October Term, 1975.

April 5, 1975. Petition for Writ of Certiorari granted.

EXCERPTS FROM COMPLAINT FILED MAY 25, 1972

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION

Civil Action No. _____

Robert (Bobby) Smith,	)	
Ronald D. Carnes,	)	
Richard A. Carter, and	)	Civil Rights
Bradford Mizell Lilley,	)	Complaint
Plaintiffs,	)	and
on behalf of themselves	)	Application For A
and all others similarly	)	Preliminary Injunction
situated	)	Cum Causa
—vs—	)	
Vernon Lee Bounds, Commissioner,	)	
State Department of Correction	)	
and Stanley Blackledge, Warden	)	
Central State Prison, Raleigh,		
North Carolina,	)	
Defendants	)	

Now Comes the plaintiffs Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilley, and would respectfully show unto the Court:

1

That they are political prisoners confined and held captive at Central Prison, 835 West Morgan Street, Raleigh, North Carolina, in the Custody of the bourgeois reactionary Warden Stanley Blackledge who is active under the direction of Vernon Lee Bounds, as commissioner of the so-called North Carolina Department of Correction.

2

That they submit this bonafide Complaint and Application

to the Court as a class action under Rule 23 of the F.R.C.P. and pursuant to the provisions of Title 42 U.S.C. 1983 and Title 28 U.S.C. 1343 (3) — (4), to enjoin the above-named defendants and their authorized agents from conducting the internal affairs of Central Prison in such a way as to deny to them and all others similarly situated human and constitutional rights guaranteed to them by the First, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 12, 19, and 27 of the North Carolina Constitution; and Articles 5, 6, 7 and 8 of the Universal Declaration of Human Rights, as hereinafter set out.

3

Plaintiffs allege that because of the defendants rules, regulations and policies, they are denied their First Amendment Right to effective and unlimited access to the Courts to redress for grievances; that the defendants maliciously deprive them of the right to prepare and serve petitions in the Courts that are orthodox in form and contain meritorious contentions by way of denying to them and all others similarly situated a law library, where they would be able to look for mandatory, judicial, persuasive and secondary authorities and find the correct word, statute and case approach through research.

4

Plaintiffs allege that they are unable to purchase all of the law books and materials that are needed because of their indigency and the defendants are denying them and others similarly situated a law library or any other means whereby they would be able to do the necessary research on their cases and effectively attack their convictions and sentences, despite the fact that the United States Supreme Court has recently upheld an order of a three-judge California District Court requiring the state to provide adequate law libraries for prison inmates. SEE: *Gilmore -vs- Lynch*, juris postponed, 401 U.S. 906 (1971) reviewing 319 F. Supp. 105 (D. Cal 1970)

5

Secondly, plaintiffs allege that the defendants are denying to them, the right to assist illiterate inmates in the preparation of their petitions to attack their convictions and sentences, and the preparation of Complaints against prison authorities for inflicting cruel and unusual punishments upon them; that defendants do not officially provide adequate legal assistance for prisoners confined at Central Prison and other maximum security units in the State of North Carolina: See: *Johnson-v-Avery* 393 U.S. 483 (1969), wherein the United States Supreme Court held: that unless prison officials provide reasonable legal assistance to inmates they may not validly enforce a regulation barring inmates from helping each other with legal work. The decision followed lower court holdings striking down similar regulations in Florida and at the federal prison in Atlanta, Georgia. See: *Coonts -v- Wainwright*, 282 F. Supp. 893 (M.D. Fla. 1968) aff'd 409 F. 2d 1337 (5th Cir. 1969); *White -v-Blackwell*, 277 F. Supp. 211 (N.D. Ga. 1967). The Supreme Court in 393 U.S. at 486 explicitly rejected the argument that inmate legal assistance must be banned because "jailhouse lawyers" would interfere with prison discipline.

****

(MOTION TO DISMISS)
(Filed June 16, 1972)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. [illegible]ARTER and BRADFORD MIZELL LILLEY, Plaintiffs On behalf of themselves and all others similarly situated	)	
v.	)	CIVIL NO. 3052
VERNON LEE BOUNDS, Commissioner, STATE DEPARTMENT OF CORRECTION, and STANLEY BLACKLEDGE, WARDEN, CENTRAL STATE PRISON, RALEIGH, NORTH CAROLINA, Defendants	)	MOTION TO DISMISS

TO: HONORABLE JOHN D. LARKINS, JR., JUDGE, UNITED STATES DISTRICT COURT, PRESIDING OVER THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA — RALEIGH DIVISION:

NOW COME the Defendants, V. Lee Bounds, Commissioner of the North Carolina Department of Correction, and Dr. Stanley Blackledge, Warden of North Carolina Central Prison, who move to dismiss the paperwriting filed herein and as reasons therefore respectfully represent unto Your Honor:

1. That, this Honorable Court lacks jurisdiction of the subject matter of the paperwriting.

2. That, this Honorable Court lacks jurisdiction over the persons of the Defendants.

3. That, the contentions set forth in the paperwriting are conclusory in nature and fail to adequately allege facts in support thereof.

4. That, the contentions set forth in the paperwriting fail to state a claim upon which the relief sought can be granted.

5. That, the contentions set forth in the paperwriting are repetitious.

6. That, the contentions set forth in the paperwriting are frivolous.

Respectfully submitted,
ROBERT MORGAN
Attorney General
Jacob L. Safron
Assistant Attorney General

I HEREBY CERTIFY that on this 15th day of June, 1972, a copy of the foregoing Motion to Dismiss and Defendants' Memorandum in Support of Motion to Dismiss were mailed, postage prepaid, to Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilley, Plaintiffs Pro Se, 835 West Morgan Street, Raleigh, North Carolina — 27603.

Jacob L. Safron
Assistant Attorney General

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 3052 Civil

Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilley, Plaintiffs	)	
v.	)	
Vernon Lee Bounds, Commissioner State Department of Correction and Stanley Blackledge, Warden, Central Prison, Raleigh, North Carolina Defendants	)	AFFIDAVIT

V. L. Bounds, being duly sworn, says:

That he is the Commissioner of Correction, North Carolina State Department of Correction. That as such he administers the affairs of the State Department of Correction in accordance with law and general policies, rules and regulations duly adopted by the Commission of Correction. That this authority and these responsibilities includes but is not limited to, among other things: "The control and custody of all prisoners serving sentence in the State Prison System, and such prisoners are subject to all the rules and regulations legally adopted for the government thereof."

That at the present time there are eighty (80) prison institutions and subsidiaries located in sixty-seven different counties. That the average population is about 10,000 inmates.

This 31 day of May, 1972.

V. L. Bounds
Affiant

Sworn to and subscribed before me
this 31 day of May, 1972.
Signature Illegible

Notary Public

My commission expires:
September 21, 1974

* * * * *

LAW REFERENCE MATERIALS AVAILABLE IN WRIT ROOM

1. **UNITED STATES SUPREME COURT REPORTS (LAWYERS' EDITION) From 1966 to 1971**
2. **UNITED STATES SUPREME COURT ADVANCE SHEETS (single cases) From 1966 to 1971**
3. **NORTH CAROLINA GENERAL STATUTES (Annotated):**
   - **A. Volume 1-A**
   - **B. Volume 1-B**
   - **C. Volume 1-C**
   - **D. Volume 1-D**
   - **E. Volume 2-A**
   - **F. Volume 4-A**
4. **ADVANCE LEGISLATIVE SERVICE TO GENERAL STATUTES:**
   Volume 1 through 15
5. **LAW TEXTBOOKS:**
   - **A. CASES & MATERIALS ON CRIMINAL LAW AND PROCEDURES (Remington)**
   - **B. MODERN CRIMINAL PROCEDURE (Hall & Kamisar, 2nd Ed.)**
   - **C. THE ADMINISTRATION OF CRIMINAL JUSTICE (cases and materials) (2nd ed., Sullivan, Hardin, Houston, Lacy, Murray & Pugh)**
   - **D. McCORMICK'S CASES ON EVIDENCE (3rd Ed.)**
   - **E. CRIMINAL LAW AND ITS PROCESSES (Paulsen & Kadish)**

* * * * *

ANSWER FILED
September 18, 1972

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER, and BRADFORD MIZELL LILLY, on behalf of themselves and all others similarly situated, Plaintiffs	)	
v.	)	CIVIL NO. 3052
VERNON LEE BOUNDS, Commissioner, State Department of Corrections, and STANLEY BLACKLEDGE, Warden, Central State Prison, Raleigh, North Carolina, Defendants	)	

ANSWER

Answering Plaintiffs' Complaint, Defendants allege as follows:

FIRST DEFENSE

That the Plaintiffs, and all other inmates committed by the courts of the State of North Carolina to the custody of the North Carolina Department of Correction and confined in 80 correctional units located across the State of North Carolina, have free and unrestricted access to the courts of the State of North Carolina and the United States of America.

SECOND DEFENSE

That the State of North Carolina provides a meaningful alternative to the establishment of law libraries in the 80 correctional units which presently constitute the North Carolina

Department of Correction by the budgeting, for the fiscal year beginning July 1, 1972, of the sum of $2,066,622 for the appointment of counsel for indigent defendants. That during fiscal year 1971 counsel for indigent defendants, as provided pursuant to N.C.G.S. 7A-450, et seq., and N.C.G.S. 7A-465, et seq., were appointed in 11,278 instances at a cost to the State of North Carolina of $1,962,719.59.

THIRD DEFENSE

That in addition to the legal resources provided at the expense of the State of North Carolina pursuant to N.C.G.S. 7A-450, et seq., and N.C.G.S. 7A-465, et seq., for both direct review and collateral attack, legal assistance is made available to the Plaintiffs, and others similarly situated, through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Council, Law School Habeas Corpus Seminars, various voluntary associations of attorneys and law students, all in addition to counsel appointed by this and other federal courts to represent pro se petitioners.

FOURTH DEFENSE

That as mandated by the Supreme Court of the United States in ARGERSINGER v. HAMLIN, ___ U.S. ___, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972), absent a knowing and intelligent waiver, no defendant may be imprisoned unless he was represented by counsel at his trial. The State of North Carolina has implemented the requirements of ARGERSINGER by an emergency allocation to the Administrative Office of the Courts in the sum of $311,676, as of September 1, 1972, for the remaining 10 months of the current fiscal year, for the payment of counsel appointed to represent indigent defendants charged with petty misdemeanors not previously included within the provisions of N.C.G.S. 7A-451 (a) (1).

FIFTH DEFENSE

That the State of North Carolina provides a meaningful

alternative to the establishment of law libraries in the 80 correctional units housing inmates committed to the custody of the North Carolina Department of Correction in that the committed inmates have all the legal assistance to which they are entitled through their appointed attorney's access to a law library. Pursuant to N.C.G.S. 7A-450, et seq., entitlement of indigent persons generally, and N.C.G.S. 7A-465, et seq., the public defender, the State of North Carolina provides licensed attorneys to indigent defendants at the expense of the State of North Carolina in the following actions and proceedings:

"(1) Any felony case, and any misdemeanor case for which the authorized punishment exceeds six months imprisonment or a five hundred dollars ($500.00) fine;

(2) A hearing on a petition for a writ of habeas corpus under chapter 17 of the General Statutes;

(3) A post-conviction proceeding under chapter 15 of the General Statutes;

(4) A hearing for revocation of probation, if counsel was provided at trial or if confinement of more than six months is possible as a result of the hearing;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for judicial hospitalization under chapter 122, article 11 (Mentally Ill Criminals), of the General Statutes;

(7) A civil arrest and bail proceeding under chapter 1, article 34, of the General Statutes; and

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible."

In each of the actions enumerated above, entitlement to

counsel continues through direct review of any judgment or decree, including review by the United States Supreme Court of final judgments or decrees rendered by the highest court of North Carolina in which decision may be had. N.C.G.S. 7A-451 (b) (6).

SIXTH DEFENSE

That the State of North Carolina has established a complete procedure for collateral review of convictions, N.C.G.S. 15-217, et seq., the Post Conviction Hearing Act, which provides for the appointment of counsel, N.C.G.S. 15-219. See, also, N.C. G.S. 7A-451 (a) (3). The appointment of counsel continues through the filing of a petition for writ of certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court, N.C.G.S. 15-222. See, also, 7A-451 (b) (6).

SEVENTH DEFENSE

That the concept of "free access" to the courts does not justify the establishment of extensive legal research facilities, making available to untrained individuals who have neither an understanding of the law or a respect for the integrity of the material, resources not readily available to the greater percentage of practicing attorneys in the State of North Carolina.

EIGHTH DEFENSE

That the State of North Carolina does not provide legal research facilities of the type sought by the Plaintiffs to the judiciary of the State of North Carolina, except for the library of the Supreme Court of North Carolina and the subsidiary library of the appellate division. The only other law libraries existing at the expense of the State of North Carolina are those in the State supported schools of law, i.e., the School of Law, University of North Carolina, Chapel Hill, North Carolina, and the School of Law, North Carolina Central University, Durham, North Carolina.

NINTH DEFENSE

That the library of the Supreme Court of North Carolina, and the libraries of the various schools of law, make available, at a nominal charge, to anyone requesting the material, copies of specific court decisions.

TENTH DEFENSE

That the North Carolina Department of Correction is a unique, multiple, community based correctional system, presently consisting of 80 units, of which only 5 or 6 may be characterized as other than a small unit, the remaining 75 or so units being small units which permit the inmates to be housed close to their home communities in programs designed for successful re-entry into society. Unlike the situation existing in states possessing prison systems consisting of only several huge units, the North Carolina Department of Correction cannot, because of its community based small unit approach to rehabilitation, secure the resources necessarily required to equally provide all inmates, wherever they may be housed in the State of North Carolina, with the extensive law library sought by a handful of litigious inmates presently confined at Central Prison, Raleigh, North Carolina. The cost of installation and maintenance of such facilities, unavailable to most licensed attorneys in the State of North Carolina except if they travel to use the libraries of the various schools of law or the library of the Supreme Court of North Carolina, would of necessity result in a restructuring of the community based correctional system of which the State of North Carolina is now so deservedly proud.

ELEVENTH DEFENSE

Except to admit that the Plaintiffs are inmates committed to the custody of the North Carolina Department of Correction by the courts of the State of North Carolina and housed at Central Prison, Raleigh, North Carolina; that the Defendant, Vernon Lee Bounds, is the Commissioner of the North Carolina Department of Correction; that the Defendant, Stanley Blackledge, is the Warden of North Carolina Central Prison, Raleigh, North Carolina, one of 80 units of the North Carolina Department of Correction; that each of the Plaintiffs have been represented by court-appointed counsel, paid by the State of North Carolina, at their trials and upon their appeals; that the Plaintiffs, together with a small band of other inmates constitute a clique of "writ writers" and "jail house lawyers", that the Plaintiffs, and a small clique of other inmates housed at Central Prison, have flooded the courts with baseless paperwritings; and that the Plaintifts have no qualms about attempting to utilize the processes of the courts by the repeated filing of baseless paperwritings, all the rest and remaining allegations of the Plaintiffs' Complaint are denied.

This 14th day of September, 1972.

ROBERT MORGAN
ATTORNEY GENERAL

Jacob L. Safron
Assistant Attorney General

ATTORNEYS FOR DEFENDANTS,
COMMISSIONER VERNON LEE BOUNDS, and
WARDEN, DR. STANLEY BLACKLEDGE.

Post Office Box 629
Raleigh, North Carolina 27602

I HEREBY CERTIFY that on this 14th day of September, 1972, a copy of the foregoing Answer was mailed, postage prepaid, to Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter and Bradford Mizell Lilly, Plaintiffs Pro Se, 835 West Morgan Street, Raleigh, North Carolina — 27603.

Jacob L. Safron
Assistant Attorney General

* * * * *

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT FILED JULY 24, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

ROBERT (BOBBY) SMITH, RONALD D. CARNES, RICHARD A. CARTER and BRADFORD MIZELL LILLY, Plaintiffs.

On behalf of themselves and all others similary situated Civil Action No. 3052

VS MOTION FOR SUMMARY JUDGMENT

VERNON LEE BOUNDS, Commissioner, STATE DEPARTMENT OF CORRECTION, and STANLEY BLACKLEDGE, Warden, CENTRAL STATE PRISON, RALEIGH, NORTH CAROLINA, Defendants.

NOW COME Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, the plaintiffs, on behalf of themselves and all others similary situated, and pursuant to Rule 56 of the Federal Rules of Civil Procedure move for summary judgment against the defendants Vernon Lee Bounds, Commissioner, State Department of Corrections, and Stanley Blackledge, Warden, Central State Prison, Raleigh, North Carolina, and in support thereof respectfully show to the Court;

1. That a verified complaint was filed by the plaintiffs on May 25, 1972.

2. That defendants filed a motion to dismiss on June 16, 1972.

3. That this Court on August 11, 1972, filed a memorandum opinion and order dismissing allegations numbers 3, 4, 5 and 6 as numbered in that Order, and instructing the defendants to

answer fully allegations numbers 1 and 2 as numbered by the Court.

4. That allegation (1) states that the defendants are depriving plaintiffs of their First Amendment right of freedom of access to the Courts by not providing them with a law library at Central Prison or at any other institution in the North Carolina Department of Corrections.

5. That allegation (2) states that the defendants are denying plaintiffs equal protection of the law under the Fourteenth Amendment by not providing poor and indigent prisoners with a law library.

6. That the said memorandum opinion and order recognized that the materials supplied to the prisoners in Central Prison and the rest of the North Carolina Deparment of Corrections are not sufficient to insure that inmates have reasonable access to the Courts.

7. That this Court in the memorandum opinion and order instructed the defendants to demonstrate any overwhelming State interest that might justify depriving inmates of reasonable access to the Courts.

8. That the defendants filed an answer to said complaint on September 18, 1972.

9. That the State has failed to demonstrate such an overwhelming State interest in depriving plaintiffs of their right to a law library, alleging only in the *TENTH DEFENSE* that to do so would place a heavy expense on the State.

10. That the expense here alleged is an insufficient State interest to justify denying to plaintiffs law libraries which would guarantee them reasonable access to the Courts.

11. That the State has failed in all defenses stated in the answer to respond to plantiffs' allegation that poor and indigent prisoners are denied equal protection of the law under

the Fourteenth Amendment by not providing them with law libraries.

12. That plaintiffs who cannot afford to hire legal assistance outside of the prison, and are not provided any legal materials within the prison, are denied equal protection of the law under the Fourteenth Amendment because they are denied the opportunity to adequately prepare writs of habeas corpus for the Court.

13. That the State in all defenses stated has failed to allege a reasonable alternative to law libraries that is currently available to indigent inmates attempting to prepare writs of habeas corpus.

14. That due to the defendants' failure to respond to plaintiffs' allegations numbers (1) and (2), and to defendants' failure to allege sufficient State interest to justify the denial of plaintiffs' constitutional rights to reasonable access to the Courts and equal protection of the law, and to the defendants' failure to allege a constitutionally sound, reasonable alternative to law libraries that is presently available to the plaintiffs, there is no question of material fact to be decided by a jury on these issues.

WHEREFORE, the plaintiffs move for summary judgment, that an injunction issue permanently enjoining the Commissioner, Vernon Lee Bounds, and Warden Stanley Blackledge from denying them a law library and that the cost of this action be taxed against the defendants.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

CERTIFICATE OF SERVICE

This is to certify that the foregoing motion for summary judgment was served upon the defendants by enclosing a copy thereof in an envelope, postage prepaid, deposited in the United States Mail and addressed as follows: Mr. Jacob L. Safron, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602.

This 18 day of June, 1973.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

* * * * *

EXCERPTS FROM COMPLAINT FILED APRIL 5, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

CIVIL ACTION NO. 4277

DONALD W. MORGAN, FRANKLIN D. STRADER AND JOHN H. RUSSELL, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,	)	COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER APPROPRIATE RELIEF
Plaintiffs	)	
vs.	)	
R. L. TURNER, SUPERINTENDENT OF ODOM CORRECTIONAL INSTITUTION OF THE NORTH CAROLINA DEPARTMENT OF CORRECTION,	)	
Defendant.	)	

Plaintiffs complain against the defendant as follows:

I.

JURISDICTION

1. This is a class action for a declaratory judgment that defendant is violating the constitutional rights of plaintiffs by depriving them, among other things, of their First and Fifth Amendment rights of freedom of access to the courts by refusing and failing to provide them with any law library, writ room or legal reference material whatsoever with which to insure their meaningful access to the courts at Odom Correctional Institution contrary to *Gilmore v. Lynch*, 319 F. Supp. 105 [N.D. Cal. 1970]; aff'd sub nom. *Younger v. Gilmore*, 404 U.S. 15, 50 L.E. 2d 142, 92 S.Ct. .... (1971); and for a permanent injunction preventing defendant from continuing to violate plaintiffs' rights, while acting under color of state law.

2. Jurisdiction is conferred on this Court under 28 U.S.C. § 1343 providing for jurisdiction over claims arising under 42 U.S.C. § 1983 and 1985; and 28 U.S.C. § 2201 and 2202 relating to declaratory judgments.

II

THE PARTIES

3. Plaintiffs are citizens of the United States and are indigent state prisoners at Odom Correctional Institution of the State Department of Correcion, serving sentences imposed against them in the Superior Courts of North Carolina.

4. Plaintiff Morgan has been incarcerated since September 26, 1969 and is presently serving two sentences totaling fifteen (15) to twenty (20) years imprisonment. Plaintiff Strader has been incarcerated since February, 1969 and is presently serving sentences totalling twenty-six (26) to thirty (30) years. Plaintiff Russell has been incarcerated since October, 1971 and is serving five (5) to ten (10) years confinement.

5. The plaintiffs are representative of a class within the meaning of Rule 23, Federal Rules of Civil Procedure. The class consist of all convicted state prisoners incarcerated at Odom Correctional Institution. The class is an ongoing one and includes state prisoners who will be incarcerated at Odom Correctional Institution in the future. The class is so numerous that joinder of all members is impracticable. The members of the class are readily identifiable from defendants' records. There are questions of law and fact common to the class. The plaintiffs will fairly and adequately protect the interest of the class.

6. Defendant R. L. Turner is Superintendent of Odom Correctional Institute and is responsible for the administration of Odom Correctional Institution. He is sued in his official capacity.

III

STATEMENT OF CLAIM

7. Plaintiffs are incarcerated at Odom Correctional Institution mainly because of their writ-writing activities and continued use of the courts during their imprisonment.

8. Plaintiffs allege upon information and belief that the defendant, R. L. Turner, by his intentional acts and omissions is violating their constitutional rights in that:

a. Defendant Turner is depriving them of their First and Fifth Amendment rights of freedom of access to the courts by refusing and failing to provide indigent plaintiffs and the class they represent with any law library, writ room or legal reference material whatsoever, with which to insure meaningful access to the courts, at Odom Correctional Institution, contrary to the holding in the 1970 case of Gilmore v. Lynch, 319 F. Supp. 105 [N.D. Cal. 1970].

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MOTION TO DISMISS
FILED JUNE 6, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs	)	CIVIL NO. 4277
v.	)	
R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	)	

MOTIONS TO DISMISS
AND FOR SUMMARY JUDGMENT

TO: HONORABLE JOHN D. LARKINS, JR., JUDGE, PRESIDING OVER THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA — RALEIGH DIVISION:

NOW COMES the Defendant, R. L. Turner, formerly Superintendent of the Odom Correctional Institute of the North Carolina Department of Correction, by Robert Morgan, Attorney General of North Carolina, and Jacob L. Safron, Assistant Attorney General, his attorneys, who move to dismiss the Complaint filed herein by the Plaintiffs entitled, "COMPLAINT FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER APPROPRIATE RELIEF", and as reason therefor respectfully show unto the Court:

1. That, this Honorable Court lacks jurisdiction over the subject matter of the Complaint.

2. That, the contentions set forth in the Complaint are conclusory in nature and fail to adequately allege facts in support thereof.

3. That, the contentions set forth in the Complaint fail to state a claim upon which the relief sought can be granted.

MOTION FOR SUMMARY JUDGMENT

The Defendant moves the Court, in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, to enter Summary Judgment in his favor; this Motion being made upon the grounds that the Plaintiffs' Complaint and other matters of record set forth and attached to the Memorandum of Law submitted by the Defendant reveals that he is entitled to Summary Judgment as a matter of law.

The Defendant alleges in support of his Motion for Summary Judgment:

1. That, the defendant adopts and again alleges the matters and things previously alleged and set forth above as a part of this Motion.

2. That, there are no genuine issues of material facts existing which are determinative of any right or duty which the Defendant owes the Plaintiffs, and, as a matter of law, the Defendant is entitled to Summary Judgment.

3. That, there are no genuine, relevant or material facts as to the deprivation of any constitutional rights of the Plaintiffs, and, therefore, no cause of action exists in their favor.

4. That, this action be dismissed and that any motion to dismiss be granted for any other lawful reason or ground that may pertain to this action.

Respectfully submitted,

ROBERT MORGAN
ATTORNEY GENERAL
Jacob L. Safron
Assistant Attorney General

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June, 1973, a copy of the foregoing Motions to Dismiss and for Summary Judgment, together with Memorandum in Support of Motions to Dismiss and for Summary Judgment, were mailed, postage prepaid, to Howard E. Manning, Esquire, Court-appointed Council for Plaintiffs, Post Office Box 1447, Raleigh, North Carolina — 27602.

Jacob L. Safron
Assistant Attorney General

* * * * *

EXCERPT OF AFFIDAVIT OF DONALD E. BATTON FILED JUNE 6, 1973

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

Civil Action No. 4277

Donald W. Morgan, Franklin D. Strader and John H. Russell, on behalf of themselves and all others similarly situated, Plaintiffs	)	
vs.	)	AFFIDAVIT
R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendant	)	

Donald E. Batton, being duly sworn, says:

That he is a Correctional Officer of the State Department of Correction and is the Assistant Superintendent of the Odom Correctional Institute located at Jackson, North Carolina. That, as such, under the supervision and authority of the

Superintendent, he exercises his authority and duties as Assistant Superintendent. That at the times mentioned in the said Civil Action, he had occasion to see said plaintiffs.

That there is no law library at this institution. However, inmates are furnished materials, ie, paper, pencils, and carbon paper to prepare writs and petitions. Should the inmate lack the knowledge and ability to prepare his writs and petitions. he is permitted to contact and obtain assistance from inmates who are knowledgeable. This the petitioner may do at any time when not engaged in assigned working tasks. Writs and petitions may be prepared in the dormitories or in the institution library or dining room if the petitioners so request.

That a notary is present at the institution five days per week from 8:00 A.M. until 5:00 P.M., and on every third weekend. That inmates wishing to have writs or petitions notarized bring them to the mail room, where the notary is located. If there are no additional copies available, the writ or petition is copied immediately and returned to the inmate. Copies, in accordance with guidebook instructions are sent to the main file at headquarters, the Attorney General's office, one for unit file and one for inmate's field jacket. Only writs and petitions are copied as above.

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DONALD W. MORGAN, FRANKLIN D. STRADER and JOHN H. RUSSELL, on behalf of themselves and all others similarly situated, Plaintiffs,

VS.

R. L. TURNER, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Defendants.

Civil Action No. 4277
MOTION FOR SUMMARY JUDGMENT

NOW COME Donald W. Morgan, Franklin D. Strader, and John H. Russell, on behalf of themselves and all others similarly situated, plaintiffs in the above entitled action, and pursuant to Rule 56 of the Federal Rules of Civil Procedure move for summary judgment against the defendant R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, and in support thereof respectfully show to the Court:

1. That a verified complaint was filed by the plaintiffs on January 23, 1973, and that the defendant failed to file an answer to the complaint but filed a motion to dismiss and for summary judgment on June 6, 1973.

2. That plaintiffs allege in Section III, paragraph 8, subparagraph (a) of the complaint that the defendant is depriving them of their First and Fifth Amendment rights of freedom of access to the Courts by failing to provide indigent prisoners with any law library or legal reference material to insure them meaningful access to the Courts.

3. That defendant in his motion for summary judgment and in all other matters of record set forth and attached to his

memorandum of law, does not deny that there are no law libraries for indigent prisoners.

4. That the affidavit of Donald E. Batton attached to defendant's motion to dismiss and motion for summary judgment states that there is no law library provided at Odom Correctional Institution.

5. That defendant does not deny that he presently fails to provide a reasonable alternative to law libraries to aid indigent inmates in the preparation of writs of habeas corpus or other petitions to the Court.

6. That defendant does not allege nor does there exist a sufficient State interest to justify the denial of indigent inmates of the First Amendment right of reasonable access to the Courts.

7. That in the absence of an overwhelming State interest in denying indigent prisoners law libraries or other reasonable alternatives to insure them reasonable access to the Courts, the First Amendment requires the State to provide adequate law libraries for all inmates.

8. That based on the foregoing and with respect to the allegations relating to the issue of the failure of the State to provide indigent inmates with reasonable access to the Courts, there are no material questions of fact raised by the pleadings.

9. That it is necessary for the plaintiffs to have law libraries or other reasonable alternatives furnished for them to enable them to better pursue the other allegations raised in the complaint.

WHEREFORE, the plaintiffs move for summary judgment, that an injunction issue requiring R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction to provide them with a law library or other reasonable alternatives to insure them reasonable access

to the Courts, and that the costs of this action be taxed against the defendant.

Howard E. Manning
Of Manning, Fulton & Skinner
Attorney for Plaintiffs
801 Wachovia Bank Building
P. O. Box 1150
Raleigh, North Carolina 27602
Telephone 919-828-8295

* * * * *

EXCERPTS FROM COMPLAINT FILED FEBRUARY 23, 1973

NORTH CAROLINA WASHINGTON COUNTY	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA NEW BERN DIVISION
JOHN HARRINGTON ALONZO WATTS CLIFTON SPEIGHT WILLIAM RYDER IRA DAVIS RONNEY McBRIDE RAY FORBES Plaintiff PRO SE -vs- JAMES HOLSHOUSER, Governor STATE OF NORTH CAROLINA; V. LEE BOUNDS, Commissioner N. C. DEPARTMENT OF CORRECTIONS; DR. STANLEY BLACKLEDGE WARDEN, CENTRAL PRISON; F. R. MOORE, Sergeant, CENTRAL PRISON FRANKLIN L. MAHAN REGIONAL SUPERINTENDENT M. S. LEE, CAPTAIN WASHINGTON COUNTY UNIT 3560 CRESWELL, NORTH CAROLINA Respondents	790 CIVIL COMPLAINT TO INSTITUTE CIVIL ACTIONS SUIT IN EQUITY; AND APPLICATION FOR A PERMANENT INJUNCTION (IN FORMA PAUPERIS)

TO: THE HONORABLE UNITED STATES DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF NORTH CAROLINA, NEW BERN DIVISION:

JURISDICTION

This Civil Complaint To Institute Civil Action; Suit in Equity and Application For A Permanent Injunction is being presented pursuant to the 1871 Civil Rights Act, Codified as Title 42, Section 1983 of the United States Code; this Courts original jurisdiction is invoked under Title 28; Section 2241 of the United States Code; Article 1, Section 9; the 8th and 14th Amendments to the United States Constitution.

NOW COMES, JOHN HARRINGTON, ALONZO WATTS, CLIFTON SPEIGHT, WILLIAM RYDER, IRA DAVIS, RONNEY McBRIDE, and RAY FORBES, the Plaintiffs Pro Se, in and for this cause of action, who respectfully says before this Honorable Court;

(1)

That the Plaintiffs are presently confined and restrained of their liberty at Creswell Prison Unit, Washington County (Unit Number 3560) Creswell, North Carolina and under the supervision of above mentioned unit and *M.S. LEE.*

* * *

The Plaintiffs show that no writ room facilities are provided at Creswell Prison Unit nor are paper, carbon paper, law books, photocopier, typewriter, or facilities such as table and environment conductive to pursuit of such an interest, exist for an individual seeking remedy of a conviction. Furthermore, as M.S. LEE Captain or Superintendent has not made such facilities, supplies and instruments available, the Plaintiffs have suffered much duress in their attempt to seeking remedy to a conviction, that the Plaintiffs contend that it in itself to be vindictive,

cruel, harsh and unusual punishment as is forbidden by the 8th Amendment to the United States Constitution.

* * *

Wherefore, the Plaintiffs have presented before this Honorable Court his allegations and contentions of when and where the defendants named herein were/are denying and abridging rights secured to the Plaintiff by the United States Constitution. It is respectfully put forth that the Honorable Court will issue the following Pretrial Court Orders:

1.) That the Court accept such petitions as sent as officials refuse or cannot supply paper and supplies to make necessary copies;

2.) ALLOW Plaintiffs to proceed in FORMA PAUPERIS;

3.) That WRIT ROOM be established within thirty (30) days at Creswell Prison Unit, Rt. 2, Box 137, Washington County Unit 3650, Creswell, North Carolina, and aside of facilities, that instruments such as photocopier, typewriter, papers, pens, Law Books (both State and Federal) be common to the area to be designated as Writ Room. Also, with specifications that the Inmates run, control and maintain Writ Room, its hours, et al.;

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AFFIDAVIT OF M. J. ROTHENBERGER FILED MARCH 20, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DISTRICT

Civil No. 790

John Harrington)
Alonzo Watts)
Clifton Speight)
William Ryder)
Ira Davis)
Ronney McBride)
Ray Forbes,)
Plaintiff Pro Se) AFFIDAVIT
)
vs)
)
James Holshouser, Governor)
State of North Carolina;)
)
V. Lee Bounds, Commissioner)
N. C. Department of Correction;)
)
Dr. Stanley Blackledge)
Warden, Central Prison;)
)
F. R. Moore, Sergeant,)
Central Prison)
)
Franklin L. Mahan)
Regional Superintendent)
)
M. S. Lee, Captain)
Washington County Unit 3560)
Creswell, North Carolina,)
Respondents)

M. J. Rothenberger, being duly sworn, says:

That he is a Correctional Officer of the State Department of Correction of the rank of Lieutenant, and is now the Acting Superintendent of the Washington County Subsidiary located at Creswell, North Carolina. That, as such, he is responsible for the operations of said subsidiary and also for the care and custody of the inmates assigned to said subsidiary. At the times mentioned in said Civil Action he was Assistant Superintendent of said subsidiary.

That at no time have the plaintiffs been denied the right to prepare writs, petitions, or other papers to petition the courts. Paper and supplies are furnished when requested. At one time, due to the unusual demand for paper, the supply was exhausted, but as soon as delivery was made on the submitted requisitions the paper was again given those requesting it.

That prior to the escape by Plaintiffs Watts, McBride, Speight, Ryder and Davis only Plaintiff Speight was confined in punitive segregation. That after the escape on January 22, 1973, and the captures on the 23rd of January, 1973, the escapees were placed in administrative segregation pending transfer to Central Prison. That each of the escapees were recommended for close custody after the escape and capture. That plaintiff escapees received the regular treatment prescribed for administrative segregation inmates, full meals, canteen privileges, and others.

That Plaintiff Speight was seen by the subsidiary physician whenever requested by him. A copy of the sick call cards is appended.

That the disciplinary proceedings against Plaintiff Harrington of a home made weapon, a knife or dagger made apparently from a pitchford tine. That Plaintiff Harrington was advised of his rights and requested Sergeant E. I. Smith to help him.

That there are no law books, typewriters nor a writ room available at this subsidiary for the use of inmates seeking to

submit petitions. That each is supplied with the necessary paper, and other supplies as needed.

This the 14 day of March, 1973,

Marvin J. Rothenberger
Affiant

Sworn to and subscribed before me

this 14 day of March, 1973.

Mary V. Pharr
Notary Public

My commission expires: 12-15-74

* * * * *

OPINION FILED SEPTEMBER 23, 1974

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 74-1320

John Harrington and
Ray Forbes,

Appellants,

versus

James Holshouser, et al.,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Argued September 5, 1974. Decided September 23, 1974

Before Haynsworth, Chief Judge, and Russell and Widener, Circuit Judges.

Barry Nakell [Court-appointed counsel] and Patrick Antrim (Third-year law student) for Appellants; Jacob L. Safron, Assistant Attorney General of North Carolina, (Robert Morgan, Attorney General of North Carolina, on brief) for Appellees.

PER CURIAM:

Plaintiffs filed suit under § 1983, claiming that prison authorities denied them access to the courts by failing to provide any legal research materials and some supplies necessary for writing complaints. The District Court granted a summary judgment

in favor of the defendants. In *Smith v. Bounds*, Memo. Opinion No. 74-3052 (E.D.N.C. May 30, 1974), the District Court upheld a similar claim against the North Carolina prison system. That court approved a plan for a prison library system and is now considering the necessity of establishing a prisoners' attorney program. Without expressing any opinion on the merits of the issues presented here, we vacate the District Court's order and remand with the suggestion that the cases be consolidated in order to allow plaintiffs to participate in fashioning a remedy, if the District Court should find relief appropriate.

VACATED AND REMANDED.